

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nora Chanko	Team: Squad #3	CCRB Case #: 201604316	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/17/2016 7:27 PM	Location of Incident: 220th Street and Hempstead Avenue	Precinct: 105	18 Mo. SOL 11/17/2017	EO SOL 11/17/2017	
Date/Time CV Reported Tue, 05/17/2016 9:36 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 05/17/2016 9:36 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Danny Chung	16683	952588	105 PCT
2. SGT Michael Butler	02978	948725	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Danny Chung	Abuse: Police Officer Danny Chung stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.SGT Michael Butler	Abuse: Sergeant Michael Butler stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Danny Chung	Abuse: Police Officer Danny Chung frisked § 87(2)(b)	
D.SGT Michael Butler	Abuse: Sergeant Michael Butler frisked § 87(2)(b)	
E.SGT Michael Butler	Abuse: Sergeant Michael Butler searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	

Case Summary

On May 17, 2016, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

On May 17, 2016, at approximately 7:27 p.m., § 87(2)(b) was driving his vehicle with passenger § 87(2)(b) in the vicinity of 220th Street and Hempstead Avenue when he was pulled over by PO Danny Chung and Sgt. Michael Butler of the 105th Precinct, who were driving an unmarked RMP (**Allegations A and B**). PO Chung approached § 87(2)(b)'s window and Sgt. Butler approached § 87(2)(b)'s window and ordered them out of the vehicle. PO Chung frisked § 87(2)(b) while Sgt. Butler frisked § 87(2)(b) (**Allegations C and D**). Following these frisks, PO Chung guarded § 87(2)(b) and § 87(2)(b) while Sgt. Butler entered § 87(2)(b)'s vehicle via the front driver's side door and searched the vehicle (**Allegation E**). After approximately 10 minutes, Sgt. Butler finished his search and ordered § 87(2)(b) and § 87(2)(b) back inside § 87(2)(b)'s vehicle. Once back inside the vehicle, Sgt. Butler took § 87(2)(b)'s keys and searched his vehicle's trunk (also **Allegation E**). Sgt. Butler then returned § 87(2)(b)'s keys, and he and PO Chung left the scene in their RMP without issuing any summonses to § 87(2)(b) or § 87(2)(b).

This case has video evidence, SnagIt copies of which have been placed below. Please note that the full videos can be found at Board Review 03 through 06 and the transcriptions of these videos can be found at Board Review 07 through 10.



2016-07-26_16-36-09.mp4



2016-07-26_16-49-53.mp4

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation because he did not want to see PO Chung or Sgt. Butler again.
- § 87(2)(b)
- On July 28, 2016, a FOIL registration confirmed that § 87(2)(b) and § 87(2)(b) have not filed any Notices of Claim for this incident (11 Board Review).

Civilian and Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- § 87(2)(b) has not been involved with any other CCRB complaints (13 Board Review).
- PO Chung has been a member of the NYPD for four years. This is the first CCRB complaint against PO Chung.
- Sgt. Butler has been a member of the NYPD for six years and has nine previous cases involving 27 allegations including one substantiated allegation for Abuse of Authority – Stop. Sgt. Butler received formalized training and instructions. § 87(2)(g)

Potential Issues

- § 87(2)(b) was uncooperative. § 87(2)(b) provided § 87(2)(b)'s phone number, e-mail address, and mailing address. A call was placed to § 87(2)(b) he answered and confirmed his contact information, but did not have time to provide a phone statement. Four subsequent calls were placed to § 87(2)(b) and three voicemails were left. Two letters were mailed to § 87(2)(b) and were not returned by the US Postal Service. Two e-mails were sent to § 87(2)(b) and were delivered successfully. To date, he has not responded.
- No independent witnesses were identified for this case.

Findings and Recommendations

Allegations not pleaded

- § 87(2)(b) alleged a threat of arrest in his original complaint; however, the allegation was not repeated in his subsequent phone statements or during his CCRB interview. Therefore, no allegation was pleaded.
- § 87(2)(b) alleged that PO Chung physically escorted him out of the vehicle by pulling him. The actions described do not rise to the level of an allegation; therefore, no allegation was pleaded.

Allegation A – Abuse of Authority: Police Officer Danny Chung stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B – Abuse of Authority: Sergeant Michael Butler stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) said he was driving with his friend § 87(2)(b) who was seated in the passenger seat. § 87(2)(b) stated that he was not driving erratically and was following traffic laws. § 87(2)(b) was not eating, drinking, smoking, or listening to music. § 87(2)(b) first saw an unmarked police vehicle driving in the opposite direction while they were on 103rd Avenue. § 87(2)(b) alerted § 87(2)(b) to the vehicle, which was an unmarked black Chevy Impala with tinted windows and license plate § 87(2)(b). § 87(2)(b) saw the vehicle make a u-turn in his rear view mirror. § 87(2)(b) stopped at a stop sign and then made a right onto 220th Street. PO Chung and Sgt. Butler turned on their lights and § 87(2)(b) pulled over on the left side of 220th Street just before Hempstead Avenue. PO Chung and Sgt. Butler exited the vehicle. § 87(2)(b) stated that neither officer asked for his ID or explained why they had been stopped (14 Board Review).

PO Chung said he and Sgt. Butler were patrolling when they observed a white four-door sedan driving northbound on 220th Street. PO Chung and Sgt. Butler were driving behind the vehicle. The vehicle was driving faster than the speed limit, which was 25 miles per hour. PO Chung estimated that the vehicle was going 40 to 45 miles per hour. PO Chung stated that the vehicle went through two stop signs without slowing down. PO Chung did not make any observations of the driver, § 87(2)(b) and did not observe a passenger at that time. PO Chung and Sgt. Butler had a brief discussion about § 87(2)(b) and stated that he was driving fast and failing to stop at the stop signs. PO Chung put on their lights and sirens. PO Chung said that after about a minute § 87(2)(b) pulled over, and stated that no other stop signs were ignored during this time (15 Board Review).

§ 87(2)(g) Sgt. Butler stated that the vehicle went through one stop sign without slowing down. The vehicle accelerated and continued to drive through stop signs after the lights and sirens were activated. Sgt. Butler stated that the vehicle pulled over after three to four blocks. PO Chung and Sgt. Butler pulled over behind the vehicle, near the intersection of 220th Street and Hempstead Avenue (16 Board Review).

Both PO Chung and Sgt. Butler's memo book entries state that the vehicle disobeyed a stop sign (17 and 18 Board Review).

SnagIt Clip #2 shows Sgt. Butler speaking to § 87(2)(b) and § 87(2)(b) is speaking to his father on speaker phone. At 00:00, § 87(2)(b) says, "I just got pulled over by the det-detectives for no reason." At 00:01, Sgt. Butler says, "Here's your license," and hands a card to § 87(2)(b). At 00:04, Sgt. Butler states, "For no reason? You just admitted to us that you went through four stop signs." At 00:08, Sgt. Butler states, "You just went through four stop signs, speeding, so don't try to change the plan." § 87(2)(b) asks, "I admitted?" Sgt. Butler continues, saying, "You have empty bags of weed all over your car, you have wrapping all over your car. That's why you're getting stopped. When I tell you that your whole car smells like marijuana..." § 87(2)(b) interrupts Sgt. Butler and says, "Do you have x-ray glasses?" (02 Board Review).

Whren vs. United States says that police officers have the right to stop an individual if they have probable cause to believe that a traffic violation has occurred, even if the officers' primary motivation is to conduct another investigation (Whren vs. United States, 507 U.S. 806) (19 Board Review).

It is undisputed that PO Chung and Sgt. Butler stopped § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that he was doing nothing wrong and was stopped for no reason. § 87(2)(b) also stated that despite he and § 87(2)(b) repeatedly asking the officers why they had been stopped, neither officer offered an explanation. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: Police Officer Danny Chung frisked § 87(2)(b)

Allegation D – Abuse of Authority: Sergeant Michael Butler frisked § 87(2)(b)

Allegation E – Abuse of Authority: Sergeant Michael Butler searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) stated that the first thing PO Chung asked him and § 87(2)(b) was whether they had any weapons in the vehicle. PO Chung then told him and § 87(2)(b) to exit the vehicle. § 87(2)(b) stepped out of the vehicle and PO Chung felt the outside of his waist and legs. § 87(2)(b) was wearing sweatpants with no pockets. PO Chung did not touch anywhere else on § 87(2)(b)'s body or put his hands underneath § 87(2)(b)'s clothes. PO Chung did not find anything on § 87(2)(b) or in his clothing. § 87(2)(b) could not remember whether Sgt. Butler patted down the exterior of § 87(2)(b)'s clothes.

§ 87(2)(b) stated that he and § 87(2)(b) stood at the rear of the vehicle facing away from the vehicle. PO Chung stood facing them and the vehicle. § 87(2)(b) looked back over his left shoulder and saw more than half of Sgt. Butler's body in the driver seat of the vehicle. Sgt. Butler had his feet on the ground outside of the vehicle and his torso and head in the vehicle and was reaching towards the passenger side of the vehicle. PO Chung told § 87(2)(b) to face forward and § 87(2)(b) turned his head away from the vehicle. § 87(2)(b) did not look back at any other point. § 87(2)(b) stated that Sgt. Butler "ransacked" the car, but did not actually see him do so. § 87(2)(b) stated that the search of the vehicle lasted about 10 minutes. Once seated in the driver seat of the car, § 87(2)(b) heard the trunk open. § 87(2)(b) realized that the car keys were no longer in the ignition and suspected that Sgt. Butler had taken the car keys. § 87(2)(b) got out of the car and observed Sgt. Butler with his hands in the trunk going through § 87(2)(b)'s belongings. PO Chung was standing near the trunk looking inside it. § 87(2)(b) did not remember whether PO Chung had his hands in the trunk or touched any of his things. § 87(2)(b) did not have any weapons or anything illegal in the trunk. § 87(2)(b) asked PO Chung and Sgt. Butler what they were doing and told the officers that they needed a warrant to search his trunk. Sgt. Butler said "Sit back down. Let us do what we gotta do." § 87(2)(b) stated that when he looked at his trunk after the incident he found his belongings scattered (14 Board Review).

Sgt. Butler stated that as soon as he and PO Chung exited the RMP, he smelled the odor of marijuana. Sgt. Butler identified the odor based on his training and experience as an officer. The smell was very strong and was emanating from the vehicle; Sgt. Butler could not identify where in the vehicle the smell was coming from. Sgt. Butler also observed "roach clips" and bags of marijuana with little pieces of marijuana by the gear shift. The windows of the vehicle were down as the officers approached. As Sgt. Butler approached the vehicle, he observed two black males; one in the driver seat and one in the passenger seat. The males in the vehicle were not doing anything or making any movements as the officers approached. When the males asked why they had been stopped, Sgt. Butler said that they had disobeyed stop signs. Sgt. Butler and PO Chung asked § 87(2)(b) and § 87(2)(b) several times if he had any weapons or contraband in the car. § 87(2)(b) and § 87(2)(b) "didn't give them straight answers." When asked directly how the individuals responded when asked if they had weapons, Sgt. Butler said they said no. § 87(2)(b)

stepped out of the vehicle and Sgt. Butler informed § 87(2)(b) that he was going to frisk him. § 87(2)(b) did not object or resist. Sgt. Butler suspected that § 87(2)(b) had weapons because he and § 87(2)(b) evaded him and PO Chung. In addition, Sgt. Butler noted that they were in a very violent area and the most violent sector in the 105th Precinct. Sgt. Butler was shown the Stop, Question and Frisk UF-250 Report filled out for § 87(2)(b) by PO Chung; when asked to clarify if he or § 87(2)(b) made any furtive movements, he said he did not recall either male making such movements. Sgt. Butler did not recall whether there were any bulges on § 87(2)(b)'s person. Sgt. Butler patted the exterior area of § 87(2)(b)'s waistband. Sgt. Butler did not feel anything, enter any pockets, or search § 87(2)(b). While Sgt. Butler patted down § 87(2)(b), PO Chung asked § 87(2)(b) to step out of the vehicle. Sgt. Butler did not see whether PO Chung frisked § 87(2)(b).

Sgt. Butler searched the “lungeable grabbable area” in the front of the vehicle for weapons. Sgt. Butler checked the front seats, dashboard, center console, and the cup holder area. Sgt. Butler stated that he opened the center console because it was readily accessible to the males; however, he did not find anything inside the compartment. Sgt. Butler did not recall whether he searched the glove compartment, or whether he opened the back doors of the vehicle to search the back seat, though he did say that he searched the back seat. Sgt. Butler did not remember whether he moved any items around within the vehicle. Sgt. Butler did not find anything in the vehicle, other than the roach clips and the bags containing little pieces of marijuana. The search lasted for about two minutes. Sgt. Butler asked § 87(2)(b) and § 87(2)(b) if there was anything in the trunk. One of the males said, “Check it,” and another said that there was nothing in the vehicle. Sgt. Butler did not remember who made which comment. The males returned to the vehicle. Sgt. Butler said that the males “yelled something” when they were back in the car, but did not remember any specific objections made about the search of the trunk. Sgt. Butler did not remember how he gained access to the trunk. Sgt. Butler looked in the trunk. No paraphernalia, narcotics, or weapons were found in the vehicle or in the trunk (16 Board Review).

PO Chung stated that as he approached the vehicle, he observed § 87(2)(b) was moving his hands as though he was looking for something or putting something away. § 87(2)(b)'s hands were near the center console. Based on his training and experience as a police officer, PO Chung smelled the odor of marijuana coming from the vehicle. PO Chung observed more than 10 small empty plastic bags in the back seat of the vehicle. PO Chung believed that Sgt. Butler was speaking to the passenger, but could not remember what was being said. PO Chung asked the driver to step out of the vehicle because it smelled like marijuana. § 87(2)(b) stepped out of the vehicle and PO Chung told § 87(2)(b) that he was going to check him for weapons. § 87(2)(b) did not say anything or resist. PO Chung did not observe any bulges on § 87(2)(b). PO Chung stated that when he asks an individual to step out of a vehicle he pats them down to make sure there are no weapons. PO Chung felt the outside of § 87(2)(b)'s clothes around his waist and both his legs. PO Chung used the terms “pat down” and “search” interchangeably, but when asked to clarify, he stated that he did not enter any of § 87(2)(b)'s pockets. PO Chung asked § 87(2)(b) to step to the rear of the vehicle. Sgt. Butler asked the passenger to step out of the vehicle. PO Chung did not observe Sgt. Butler pat down the passenger but assumed that he did.

PO Chung stated that he smelled the odor of marijuana on both § 87(2)(b) and the passenger. PO Chung asked § 87(2)(b) why the car smelled like marijuana. § 87(2)(b) replied that they had

smoked marijuana earlier in the day. PO Chung asked if § 87(2)(b) had any marijuana in the vehicle or on his person and § 87(2)(b) said no. PO Chung stated that Sgt. Butler asked the passenger if there was any marijuana in the vehicle, and the passenger said no. PO Chung observed Sgt. Butler look in the car from all four doors. PO Chung did not observe Sgt. Butler move anything within the car. Sgt. Butler's search of the vehicle lasted approximately three minutes. § 87(2)(b) did not ask any questions about the car being searched. PO Chung did not remember whether § 87(2)(b) turned around to look at his vehicle. PO Chung did not tell § 87(2)(b) or the passenger to turn back around or tell them to face away from the vehicle. § 87(2)(b) and § 87(2)(b) got back in the vehicle. Sgt. Butler searched the trunk of the car as they walked back towards the vehicle. Sgt. Butler looked in the trunk and moved a few things around. When § 87(2)(b) saw Sgt. Butler looking in the trunk he said, "You can't do that." PO Chung said, "Yes, I can." § 87(2)(b) did not ask why the trunk was being searched. PO Chung observed the contents of the trunk and did not see any more of the small bags he observed in the back seat. PO Chung smelled the odor of marijuana in the trunk. The search of the trunk lasted for about 30 seconds (15 Board Review).

SnagIt clip #1 shows PO Chung standing near the trunk while Sgt. Butler reaches into it (01 Board Review). As discussed earlier, SnagIt clip #2 shows Sgt. Butler saying, "You have empty bags of weed all over your car, you have wrapping all over your car. That's why you're getting stopped. When I tell you that your whole car smells like marijuana..." § 87(2)(b) interrupts Sgt. Butler and says, "Do you have x-ray glasses?" (02 Board Review).

The UF-250, or Stop, Question and Frisk Report, prepared by PO Chung for § 87(2)(b) stated that § 87(2)(b) was frisked; "Furtive movements," "Refusal to comply with officers directions leading to reasonable fear for safety," "Evasive, false, or inconsistent response to officer's questions," "Changing direction at sight of officer/flight," and "Other" were checked, and "odor of marijuana" was written in (20 Board Review). The UF-250 Report prepared for § 87(2)(b) listed "Furtive Movements," "Suspicious Bulge/Object," and "Other," "Odor of marijuana" and "Bulge in pocket" were written in (21 Board Review).

PO Chung's memo book entries note the odor of marijuana and state that § 87(2)(b) was making furtive movements (17 Board Review). Sgt. Butler's memo book entries note the odor of marijuana but do not note furtive movements made by either § 87(2)(b) or § 87(2)(b). Sgt. Butler's memo book states that the lungeable, grabable area of the vehicle was searched (18 Board Review).

The odor of marijuana from a vehicle grants officers probable cause to search the vehicle and its occupants (People v. Chestnut, 43 A.D.2d 260 (3rd Dept. 1974) (23 Board Review)).

It is undisputed that PO Chung frisked § 87(2)(b). Sgt. Butler frisked § 87(2)(b) and that Sgt. Butler searched the trunk. § 87(2)(g)

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Squad: 3

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date